

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JACOB WILLIAM AUSTILL,  
JACKIE LYNN AUSTILL, and ELLIOT  
REDINGER, Minors.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JANET ARLENE AUSTILL,

Respondent-Appellant,

and

TODD REDINGER and ROBERT ELMBLAD,

Respondents.

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In the Matter of JACOB WILLIAM AUSTILL,  
JACKIE LYNN AUSTILL, and ELLIOT  
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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TODD REDINGER,

Respondent-Appellant,

and

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UNPUBLISHED  
September 14, 2006

No. 268358  
Wayne Circuit Court  
Family Division  
LC No. 05-439205-NA

No. 268359  
Wayne Circuit Court  
Family Division  
LC No. 05-439205-NA

JANET ARLENE AUSTILL and ROBERT  
ELMBLAD,

Respondents.

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Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals as of right to the trial court order terminating her parental rights to all three minor children at the initial disposition under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), (k)(iii), and (k)(v). Respondent father appeals as of right to the same order terminating his parental rights to Jacob Austill and Elliot Redinger under the identical statutory grounds. We affirm.

The trial court did not clearly err in finding that statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence supported termination of respondent father's parental rights pursuant to subsections 19b(3)(b)(i), (g), (j), (k)(iii), and (k)(v) and termination of respondent mother's parental rights pursuant to subsections 19b(3)(b)(ii), (g), and (j).

The evidentiary standard was not proof beyond a reasonable doubt that respondent father caused all of Elliot's injuries. Rather, clear and convincing evidence that respondent father physically injured Elliot to the extent contemplated by statute was required. The evidence showed that respondent father admitted to injuring infant Elliot's head several times, and that Elliot exhibited signs of old and new injuries. Whether respondent father caused 100 percent of Elliot's head injury or whether part of the injury was caused by birth trauma could not be measured with absolute certainty. However, the severity and number of impacts that respondent admitted inflicting over time constituted clear and convincing evidence that at a minimum respondent father contributed substantially to Elliot's skull fracture, subdural hematomas, and retinal hemorrhaging. Respondent father's acts amounted to battering and resulted in the life-threatening injury of respiratory failure. Clear and convincing evidence also showed that he physically disciplined Jackie and Jacob in an inappropriately harsh manner.

Given respondent father's mental health, anger management, and parenting issues, the fact that he retracted his previous admission that he intentionally injured Elliot, and the fact that he refused to believe that his actions contributed to Elliot's injuries, the trial court did not err in concluding that respondent father would not become able to provide proper care or custody within a reasonable time, and the children would likely be harmed if placed in his home.

Clear and convincing evidence also showed that respondent mother was aware of respondent father's harsh discipline of Jackie and Jacob but did not protect them from the physical injuries he inflicted. The evidence was not clear that she had opportunity to prevent the injuries he inflicted on Elliot. Despite respondent mother's conviction of fourth-degree child abuse for inappropriately disciplining Jacob, the evidence did not show that respondent mother

injured Jacob or the other children to the extent contemplated by subsections 19b(3)(b)(i), (k)(iii) or (k)(v).

However, by virtue of her marriage to respondent father while this proceeding was pending, her intent to maintain a home with him, and her steadfast denial that respondent father harmed Elliot despite his admission to police and evidence to the contrary, respondent mother demonstrated that she was unable to provide proper care or custody for the children within a reasonable time, and that they were likely to be harmed if returned to her home.

Further, the evidence did not show that termination of respondents' parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). There was no reasonable expectation that respondent father would be able to provide a proper home for the children within a reasonable time, and respondent mother would not be able to do so because of her determination to reside with respondent father. Therefore, in the interest of promoting protection, stability and permanence for the children, termination of respondents' parental rights was not clearly contrary to their best interests.

Affirmed.

/s/ Alton T. Davis  
/s/ William B. Murphy  
/s/ Bill Schuette